

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 11<sup>th</sup> February, 2015

The House met at 2.30 p.m.

*[The Speaker (Hon. Muturi) in the Chair]*

### PRAYERS

### PETITION

#### DELAYED RESETTLEMENT OF MANOONI DAM DISPLACED PERSONS

**Hon. Maanzo:** Thank you, hon. Speaker.

I, the undersigned, on behalf of Manooni Dam displaced persons, draw the attention of the House to the following:-

THAT, aware that Article 40(1) entitles every Kenyan to the right to acquire and own property of any description in any part of the country;

THAT, land, as a property, is an important factor of production which supports livelihoods of many Kenyan households that thrive on farming;

THAT, Article 40(3)(b)(i) obligates the Government to promptly and justly compensate persons from whom land is acquired for purposes of putting up public utilities;

THAT, in 1984, 75 plots belonging to residents of Kakutha/Kyemundu Location in Mbitini Ward, Makueni Constituency in Makueni County was acquired by the Government to construct Manooni Dam;

THAT, the acquisition and subsequent clearance of the land so acquired led to destruction of crops such as citrus fruits, coffee, arrow roots, sugarcane and a variety of vegetables that supported their livelihoods and earned them income;

THAT, in 1995, the District Commissioner issued the displaced persons allotment letters to settle in Nguu Settlement Scheme;

THAT, in 1999, the displaced persons were issued with acceptance letters by the Ministry of Lands, after which they proceeded and paid 10 per cent of the value of the allotted plots to Settlement Fund Trustees;

THAT, when the victims went to the allotted settlement scheme, they were repelled with hostility by occupants of the land, forcing them to live as vagrants;

THAT, notwithstanding the issuance of allotment letters, acceptance letters and payment of 10 per cent of the Settlement Fund Trustees, efforts by Government

administrators and elected leaders from the region to have these displaced persons settled at the Nguu Settlement Scheme have yielded no fruit.

THAT, these citizens whose goodwill caused them to surrender their land to the Government to pave way for the construction of Manooni Dam for public good are now condemned to landlessness and abject poverty;

THAT, the unwarranted delay by the Government to have the Manooni Dam displaced persons compensated and resettled over 30 years down the line, is not only a miscarriage of justice but also a flagrant violation of their right to prompt and just compensation as contemplated under Article 40(3)(b)(i) of the Constitution.

THEREFORE, your humble petitioners pray that the National Assembly through the Departmental Committee on Lands:-

(i) Intervenes to conduct a special inquiry into the circumstances behind the inordinate delay in compensating the victims and failure to have them resettled in the Nguu Settlement Scheme, even after being issued with allotment letters, acceptance letters and having paid 10 per cent to the settlement fund trustee in 1999 and;

(ii) Urges the Cabinet Secretary for Lands to expediently and justly compensate the victims who have waited for far too long;

THAT, to the best of our knowledge, there is no pending case before any court of law in respect to this matter.

And your petitioners will forever pray.

Thank you, hon. Speaker.

**Hon. Speaker:** The Petition stands committed to the Departmental Committee on Lands.

### PAPERS LAID

**Hon. A.B. Duale:** Thank you, hon. Speaker. I beg to lay the following Papers on the Table of the House today, Wednesday, 11<sup>th</sup> February, 2015:-

The Annual Report of the National Police Service Commission for the 2013/2014 Financial Year.

The Commission on the Implementation of the Constitution Quarterly Report for the period October-December, 2013 (in accordance with sections 4(a), 5(6), 15(2)(d) of the Sixth Schedule of the Constitution and Section 4(d) of the Commission for the Implementation of the Constitution Act, 2010)

The Annual Report and Financial Statements of the Kenya Dairy Board for the year ended 30<sup>th</sup> June, 2012 and the Certificate of the Auditor General therein.

The Annual Report and Financial Statements of the Kibabii University College for the year ended 30<sup>th</sup> June, 2013 and the Certificate of the Auditor-General therein.

The Annual Report and Financial Statements of the Kenya Literature Bureau for the year ended 30<sup>th</sup> June, 2013 and the Certificate of the Auditor General therein.

Thank you, hon. Speaker.

**Hon. Speaker:** The Chairperson of the Departmental Committee on Justice and Legal Affairs.

**Hon. Chepkong'a:** Thank you, hon. Speaker. I beg to lay the following Paper on the Table of the House today, Wednesday, 11<sup>th</sup> February, 2015:-

The Report of the Departmental Committee on Justice and Legal Affairs on the Companies Bill, 2014 and the Insolvency Bill, 2014.

Hon. Speaker, this Report contains recommendations and it is quite voluminous. The recommendation of the Committee is to ask the Leader of Majority Party to withdraw the Bills as they are tabled in the House with a view to republishing them. The amendments in the Companies Bill are about 963 while in the Insolvency Bill; we have amended all the clauses.

Thank you, hon. Speaker.

### NOTICES OF MOTIONS

**Hon. Speaker:** The first one on my paper is the Motion by hon. Wangamati.

#### COMPENSATION OF MAU MAU VICTIMS

**Hon. Wangamati:** Thank you, hon. Speaker. I beg to give notice of the following Motion:-

THAT, aware that in 2013 the British Government agreed to pay Kenyans who were abused, tortured, maimed and detained by British colonial forces during the *Mau Mau* uprising in 1952 and onwards compensation of about Kshs2.5 billion as an out of court settlement; further aware that the compensation was paid to a section of *Mau Mau* victims from Kiambu and Nyeri counties, leaving out victims from Meru, Kirinyaga, Embu, Kajiado and other parts of Kenya; cognizant of the fact that leaders from the two counties initiated a court process claim for compensation to the victims who were eventually compensated; noting that the struggle for independence in this country involved various communities and individuals like the followers of the *Dini ya Msambwa* Movement who took part in the uprising against the colonial government and were also killed, tortured and detained and therefore deserved equal compensation from the British colonial government; also aware that the British Government has accepted to release further compensation money on condition that the only victims who are still alive and can prove that they were tortured will be compensated from this money; this House resolves that the Government ensures that compensation from the British Government this time should be given to all affected homes and families of victims who are still alive and their children in this country.

Thank you, hon. Speaker.

**Hon. Speaker:** Very well. Next is hon. Wakhungu.

#### RANKING OF NATIONAL EXAMINATIONS

**Hon. Wakhungu:** Thank you, hon. Speaker. I beg to give notices of the following Motions:-

THAT, aware that Article 35(1) (a) of the Constitution provides for the right of access to information held by the State; further aware that the education sector has recently been marred by confusion and unnecessary anxiety due to the abolishment of the ranking system in the national examinations; concerned that this action by the Ministry of Education was arrived at without due consultation with the relevant stakeholders including KUPPET, KNUT, the parents association and investors in the sector among others, contrary to Article 118 of the Constitution; and cognizant of the fact that the ranking system has been long-held tradition in the sector both locally and internationally and has been a source of positive competition, motivation, rewarding and an important guideline for resource allocation; this House resolves that the Government through the Ministry of Education immediately reverts back to the ranking system of the national examinations especially the Kenya Certificate of Primary Education (KCPE) and Kenya Certificate of Secondary Education (KCSE).

Thank you, hon. Speaker. Can I give notice of the second Motion?

**Hon. Speaker:** Yes, proceed, but even as you give notice of that Motion, I am just wondering whether your reference to Article 118 of the Constitution, as it touches the Ministry, you are not trying to bring the Ministry as part of Parliament because Article 118 deals with Parliament. Public participation is a good idea but when you bring in Article 118 it is like you are saying that the Ministry is part of Parliament. On that, I think you will deal with it when it comes to notice of Motion.

#### DECENTRALISATION OF ID CARDS REGISTRATION

THAT, aware that devolution was meant to devolve governance and public services across the country including access to basic services like acquisition of identity cards, passports, birth certificates, voters' cards among others; further noting that currently all registration of national identity cards only happens at one centre in Nairobi; cognizant of the fact that this delays the acquisition of identity cards thus denying Kenyans their right to employment, ability to vote, access to public funds like Uwezo Fund and other crucial services; this House resolves that the Government decentralises the registration of national identification cards to the county level to expedite the process and allow Kenyans to access public services in a timely manner.

Thank you, hon. Speaker.

**Hon. Speaker:** Very well. Let us have hon. Mirenga, the Member for Kisumu Town.

**Hon. Mirenga:** Thank you, hon. Speaker. I want to insist that my constituency is the City of Kisumu not a town. I do not belong to a town, I belong to a city.

(Laughter)

**Hon. Speaker:** Hon. Mirenga, read the Independent Electoral and Boundaries Commission's list. We go by what the IEBC has designated. You may desire that the constituency be called a city but it is called Kisumu Town.

**Hon. Mirenga:** It is okay, hon. Speaker but the IEBC has said Kisumu Central not Town.

ESTABLISHMENT OF SELECT COMMITTEE  
TO REVIEW SECURITY SITUATION

I beg to give notice of the following Motion:-

THAT, aware that Article 26 of the Constitution guarantees the right of every person to life, and that no person shall be deprived of life intentionally; further aware that Article 35 provides for the right of access to all important information by all; cognizant of the fact that national leaders and their families form an integral part of national being that builds and helps in forging unity; concerned that several national leaders and/or prominent personalities including the late Sen. Mutula Kilonzo of Makueni, the late Sen. Otieno Kajwang' of Homa Bay and the late Fidel Castro Odinga have lost their lives in unclear circumstances in the last two years and of course we know that our colleague hon. Muchai was also executed in a manner that is likely to later on form part of this investigation; further concerned that the causes of death of these prominent national leaders have been shrouded in mystery creating unnecessary anxiety among different groups of people particularly our side of the divide; this House resolves to establish a Select Committee to comprehensively investigate and inquire into the causes of death of the three personalities, consider and review all related findings on the deaths and table its report within (90) days, and approves the following hon.

Members to constitute the Committee:-

1. Hon. Mirenga Ken Obura, MP - Chairperson

I wish to clearly state that there is no cause for alarm. The practice and custom has been that the Mover becomes the chair.

2. Hon. (Ms.) Tuya Roselinda Soipan, MP - Vice  
Chairperson

3. Hon. Ababu Pius Namwamba, EGH, MP

4. Hon. Adan Keynan, CBS, MP

5. Hon. Aisha Juma, MP,

6. Hon. Bare Shill, MP

7. Hon. Charles Mongare Geni, MP

8. Hon. (Ms.) Florence Kajuju, MP

9. Hon. Jared Opiyo, MP

10. Hon. Dennis Waweru, MP

11. Hon. (Ms.) Mary Emaase, MP

12. Hon. Michael Kisoi, MP
13. Hon. (Ms.) Sabina Chege, MP
14. Hon. Samuel Chepkong'a, MP
15. Hon. (Dr.) Robert Pukose, MP

(Laughter)

Thank you, hon. Speaker.

**Hon. Speaker:** I hope the various parts of your interjection are not part of the Motion. Let us have Notice of Motion by the hon. Francis Kigo Njenga. The Member being absent, let us have the hon. Joyce Wanjalah Lay.

#### TRANSLATION OF KENYAN LAWS INTO KISWAHILI

**Hon. (Ms.) Lay:** Thank you, hon. Speaker. I beg to give notice of the following Motion:-

THAT, aware that Kiswahili is the national as well as the official language of the Republic as enshrined in the Constitution; further aware that equality and freedom from discrimination and access to information are fundamental rights; cognisant of the fact that democracy and public participation of the people is a national value and principle of governance as per Article 10 of the Constitution; deeply concerned that a section of Kenyans have a low level of knowledge of their legal rights and laws passed by this House as a result of the existing language barriers; convinced that unless we as a nation lay down mechanisms for translating laws passed by Parliament and County Assemblies into Kiswahili most Kenyans will continue being partially aware of the law; this House urges the National Council for Law Reporting to progressively translate the laws of Kenya into Kiswahili.

Thank you.

**Hon. Speaker:** Very well, next Order.

#### PROCEDURAL MOTION

##### LIMITATION OF DEBATE ON BILLS SPONSORED BY PARTIES OR COMMITTEES

**Hon. A.B. Duale:** I beg to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order 97(4), this House orders that each speech in a debate on Bills sponsored by a Committee, the Leader of the Majority Party or the Leader of the Minority Party be limited as follows:- A maximum of forty five (45) minutes for the Mover, in moving and fifteen minutes (15) in replying, a maximum of thirty (30) minutes for the Chairperson of the relevant Committee (if the Bill is not sponsored by the relevant

Committee), and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen minutes (15) each (if the Bill is not sponsored by either of them); and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that Order.

Hon. Speaker, this is informed by Standing Order No. 97(4) and it is about time allocated as contained in the Motion and also as per our practice. Therefore, this Procedural Motion and the ones that follow are just normal procedures that we have to do every time we are having a new Session. I am doing this in a new Session of the third year of the 11<sup>th</sup> Parliament. It is the practice that we always go through. So, I beg to move and ask the Leader of Minority Party, hon. Mwadeghu to second.

**Hon. Speaker:** Let us have the Leader of Minority Party. Proceed.

**Hon. Mwadeghu** seconded.

*(Question proposed)*

**Hon. Speaker:** I had indicated earlier that should you want to make an intervention, I should see something on the intervention box. I see a fairly experienced Member, the hon. Eng. Nicholas Gumbo raising his finger in the form of a known political party.

**Hon. (Eng.) Gumbo:** Hon. Speaker, ordinarily we would not need to even debate Procedural Motions of this nature but I was just wondering aloud. Without trying to anticipate debate, if you look at what we have on the Order Paper today- the Insolvency Bill, before we debated this Bill, I had drawn the attention of the Chair to the abnormal nature of the volume of the Bill and I was just wondering if it would be possible even with this provision to make exceptions.

I want to believe that if someone was to go through a Bill such as that one which is in excess of 1,000 pages and you want to look at it clause by clause, then this limitation may not necessarily work. Therefore, I have no problem with that so long as we understand that the House will retain the fluidity to be adaptable to situations that are unique such as what we encountered in the Insolvency Bill and the Companies Bill. That was my point.

Thank you.

**Hon. Speaker:** I think all I need to do is to clarify the position, which is that the same Standing Order allows any Member to move and indeed hon. Gumbo as you did last year, you had drawn the attention of the Speaker to the fact that the Companies Bill had 1,044 clauses and the Insolvency Bill had 786 clauses. These are the kind of Bills that I am sure you are referring to. Obviously, this limitation would not apply. However, the advantage we have with these Standing Orders is that they allow the House to resolve issues in every circumstance especially given the issues that you addressed. I am sure the House was going to agree to the proposal to increase the time that each Member contributing to those kinds of Bills would take. So, therefore, notwithstanding this, the Procedural Motion and these provisions of 97(4), it is still open within the same Standing

Order to move at the commencement of every Motion or Bill that there may be need for the House to resolve to adjust this. However, this is merely for purposes of guidance.

**Hon. (Eng.) Gumbo:** I thank you, hon. Speaker. I stand advised.

**Hon. Speaker:** Let us have hon. Eseli.

**Hon. (Dr.) Simiyu:** Thank you. I will go by what my brother hon. Gumbo said, that this is a Procedural Motion and generally we should not be debating it. However, there are some crucial issues that we need to air. During the previous Sessions, it has been common to reduce time for debating to hardly five minutes even though it might be a critical Motion that is on the Floor of the House. I feel that at times we have ended up not really---

Hon. Speaker, at times I feel that we will end up not doing justice to that debate in the sense that people are not able to develop their arguments well and lay them before the House. I feel that this might have contributed partly to some lack of interest by some Members. So, I would like to urge you, because Members insist that we are too many of us who want to speak, that you reduce the time for speeches to five minutes. I would urge you to use your wisdom so that if the matter is so critical, for example, what we had with the Security Laws (Amendment) Bill and so on, where you need ample time to crystallise an argument, that you allow more time to the maximum of ten minutes that is allowed. That way, Members will actually debate. It is very difficult to debate a very critical matter in five minutes. So, hon. Speaker, I would urge that during such moments you actually allow that maximum ten minutes.

Thank you.

**Hon. Speaker:** I believe it is the same situation. The only requirement is that on occasions if Members pay attention in advance then they can draw the attention of whoever is on the Chair to the necessity of increasing time beyond the ten minutes. However, the House is at liberty to resolve, one way or the other, to either increase, or reduce. That will be dictated by the peculiar circumstances of each business being transacted. All we need to do is to make sure that we constantly remind ourselves. Otherwise, it is necessary that we have this as a guide. However, what you said is absolutely correct that there is need sometimes to increase the time and even in some cases to reduce that time. It is really for the House to express itself and decide one way, or another.

Hon. Members, there are several Procedural Motions as you have noticed on the Order Paper. Hon. Wamunyinyi, if we could just finish this one!

*(Question put and agreed to)*

## PROCEDURAL MOTION

### LIMITATION OF DEBATE ON INDIVIDUAL MEMBERS' BILLS

**Hon. A.B. Duale:** Thank you, hon. Speaker. I beg to move the following Procedural Motion:-



THAT, notwithstanding the provisions of Standing Order 97(4), this House orders that each speech in a debate on Bills not sponsored by a Committee, the Leader of the Majority Party or the Leader of the Minority Party be limited as follows:- A maximum of three hours and thirty minutes, with not more than thirty (30) minutes for the Mover in moving and ten (10) minutes in replying, a maximum of thirty (30) minutes for the Chairperson of the relevant Committee and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen minutes (15) each; and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that order.

Hon. Speaker, this is again the second time we are having this kind of Motion. It is informed by our experience in the last two sessions. The difference between this Motion and Order No.8 is that this proposes a Bill sponsored by Private Members commonly referred to as Private Members' Bills. That Bill should have a limit of three-and-a-half hours for debate. This will enable the House to clear the huge backlog of Bills sponsored by Private Members which in most cases are not as voluminous as those sponsored by parties or committees.

In the last Session alone Members moved more than ten Procedural Motions to limit debate on Private Members' Bills. This Motion will thus save time for the House. To allay the fears of hon. Gumbo, we have removed the upper limit so there is no limit. That one is done in all these Motions. It is done so that we take care of the Insolvency Bill or any other voluminous Bills.

Thank you, hon. Speaker.

**Hon. Speaker:** The Minority Party whip.

**Hon. A.B. Duale:** Hon. Speaker, I ask the Minority Party Whip, hon. Mwadeghu to second the Motion.

**Hon. Mwadeghu** seconded.

*(Question proposed)*

*(Question put and agreed to)*

## PROCEDURAL MOTION

### LIMITATION OF DEBATE ON MOTIONS

**Hon. A.B. Duale:** Hon. Speaker, I beg to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order 97(4), this House orders that each speech in a debate on any Motion, including a Special Motion be limited in the following manner:- A maximum of three hours with not more than twenty (20) minutes for the Mover and ten (10)

minutes for each other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each, and that ten (10) minutes before the expiry of the time, the Mover shall be called upon to reply; and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that order.

This is limitation of debate on Motions whether ordinary Motions or Special Motions. This is informed by the practice in the last Parliament and in this Parliament. This Motion is proposing three hours for ordinary or Special Motions with not more than 20 minutes for the Mover and ten minutes for each and every Member of Parliament. The upper limit has been left open so that the House can have the discretion either to reduce or increase the speaking time as may be considered through the Speaker. I think it is a straightforward matter.

I beg to move and ask hon. Mwadeghu to second.

**Hon. Mwadeghu** seconded.

*(Question proposed)*

*(Question put and agreed to)*

## PROCEDURAL MOTION

### LIMITATION OF DEBATE ON REPORT OF A COMMITTEE

**Hon. A.B. Duale:** Hon. Speaker, I beg to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order 97(4), this House orders that each speech in a debate on a Report of a Committee, including a Report of a Joint Committee of the Houses of Parliament, a Sessional Paper or any other Report submitted to the House, be limited as follows: - A maximum of sixty (60) minutes for the Mover in moving and thirty (30) minutes in replying, and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each; and that priority be accorded to the Leader of the Majority Party and the Leader of the Minority Party, in that Order.

This Motion is not proposing an upper limit on the total debating time for a debate of a committee report. It is proposing to limit speaking time for the Mover, leadership and individual members. The total time for the debate of a report of a committee may vary depending on the content and the volume of that report. Therefore, the House will have the liberty to use other provisions of the Standing Orders to limit debate on committee reports.

I beg to move and ask hon. Mwadeghu to second.

**Hon. Speaker:** Hon. Washiali, it is against the Standing Orders to do what you are doing. You are standing between the Speaker and the Members speaking.

**Hon. Mwadeghu** seconded.

*(Question proposed)*

*(Question put and agreed to)*

## PROCEDURAL MOTION

### LIMITATION OF DEBATE ON MOTION ON ADDRESS BY PRESIDENT

**Hon. A.B. Duale:** Hon. Speaker, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order 97 (4), this House orders that debate on the Motion on the Address by the President be limited to no more than five (5) minutes for each Member Speaking, thirty (30) minutes for the Mover in moving and replying and twenty (20) minutes for the Leader of Minority Party.

This is informed by our practice in the last two Sessions of the Eleventh Parliament. This Motion is proposing five minutes for each of the Members and 30 minutes for the Mover. This being a very important debate on the Address of the President that is done annually, we felt that each Member should get an opportunity to speak.

I beg to move and ask hon. Mwadeghu to second.

**Hon. Mwadeghu** seconded.

*(Hon. Kuria crossed the Floor  
without approaching the Bar)*

**Hon. Speaker:** Hon. Moses Kuria, stop doing what you are doing. Freeze like that.

*(Question proposed)*

**Hon. Speaker:** I want to give an opportunity to those who are walking to sit down including this Member who is in front of me.

*(Question put and agreed to)*

## PROCEDURAL MOTION

### LIMITATION OF DEBATE ON ADJOURNMENT

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**Hon. A.B. Duale:** Hon. Speaker, I beg to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order 97(4), this House orders that the debate on any Motion for the Adjournment of the House to a day other than the next normal Sitting Day in accordance with the Calendar of the Assembly, be limited to a maximum of three (3) hours with not more than five (5) minutes for each Member speaking, except the Leader of Majority party and the Leader of the Minority Party, who shall be limited to a maximum of ten (10) minutes each; and that priority be accorded to the Leader of the Majority Party and the Leader of the Minority Party, in that order.

Provided that, when the period of Recess proposed by any such motion does not exceed ten (10) days, the debate shall be limited to a maximum of thirty (30) minutes, and shall be strictly confined to the question of adjournment.

This is a very straight forward matter. It is about how we allocate time when we have Motions for Adjournment. The most important thing to note is, if the adjournment is within ten days, then that debate will be there for 30 minutes and shall be strictly confined to the question of adjournment. If it is more than 10 days, then the requirement is that we will spend three hours and each Member will be given five minutes to debate.

With that I move and ask hon. Mwadeghu to second.

**Hon. Mwadeghu:** Hon. Speaker, I second

*(Question proposed)*

*(Hon. Oyoo walked into the Chamber  
as the Speaker was on his feet)*

**Hon. Speaker:** Hon. Member for Muhoroni, do not do that.

It is fair that when a Member walks into the Chamber, they must be able to look around and understand what is happening. Hon. Member for Muhoroni is walking as though he is walking through Muhoroni Constituency.

*(Question put and agreed to)*

## BILLS

### *First Readings*

THE CONSTITUTION OF KENYA (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL No.01 OF 2015)

THE CONSTITUTION OF KENYA (AMENDMENT) (No.2)  
BILL (NATIONAL ASSEMBLY BILL No.02 OF 2015)

THE KENYA NATIONAL EXAMINATION  
COUNCIL (AMENDMENT) BILL

*(Orders for the First Readings read –Read the First time and  
ordered to be referred to the relevant Departmental Committees)*

*Second Readings*

THE INSOLVENCY BILL

*(Hon. A.B. Duale on 22.10.2014)*

*(Resumption of Debate interrupted on 22.10.2014)*

THE COMPANIES BILL

**Hon. A.B. Duale:** Thank you, hon. Speaker. Hon. Nuh, hon. Wandayi and hon. Ken Mirenga can wait for the results tomorrow, today is not a campaign day; it is only a day for preparations.

Hon. Speaker, through you and pursuant to the provisions of Standing Order No.140, I wish to withdraw two Bills, namely; The Insolvency Bill 2014 and the Companies Bill 2014. I do this on the request of the Departmental Committee on Justice and Legal Affairs which has been considering Bills since the last ten months. The Chairpersons have indicated in writing that the Committee having consulted many stakeholders including the Attorney General and the Kenya Law Reform Commission (KLRC), is now of the view that the Bills need to be republished to take into account the numerous amendments occasioned by their said consultations.

The Committee has indicated that out of the 1,044 clauses of the Companies Bill 2014, 963 of them are earmarked for amendment. Further, each of the 736 clauses of the Insolvency Bill 2014 will also attract fundamental amendments by the Committee. In view of the above, it is therefore fair to withdraw these Bills to allow for their republication to incorporate the many amendments agreed between the Committee, the Attorney General and other stakeholders.

Using Standing Order No. 140, I beg to withdraw the two Bills appearing as Order No. 17 and Order No. 18.

*(Applause)*

**Hon. Speaker:** Very well. Hon. Mulu you want to object or what is it?

**Hon. Mulu:** Thank you, hon. Speaker. I plead with hon. A.B. Duale to relax, I am not opposing. I support but I just want to make some remarks. While I support the proposal to withdraw these two Bills, it is important that this House notes that these two Bills are very important to this country in terms of improving the environment, in terms of determining how business will be conducted and in helping our economy grow. While

the Bills will be taken back to the Executive as a result of the discussions, I plead that these discussions are expedited so that we get these Bills back to the House. They need to become Acts of Parliament. At the same time, when the Insolvency Bill was withdrawn from this House, we indicated that it would be good for this House to discuss the Companies Bill first before we discuss the Insolvency Bill. I plead with the Leader of Majority Party that even as we get the Bills back to the House, we need to start with the Companies Bill.

Thank you, hon. Speaker.

**Hon. Speaker:** Perhaps, you are addressing the issue of not just discussion, because after being withdrawn they will have to be published afresh. I imagine that your appeal is that the Companies Bill be published before the Insolvency Bill; even the way they were can become chronological and make greater sense.

Hon. (Eng.) Gumbo, the Floor is yours.

**Hon. (Eng.) Gumbo:** Hon. Speaker, I wish to thank the Leader of Majority Party; I wish he could listen to me.

The Leader of Majority Party is working with the Chair of the Committee on Justice and Legal Affairs, which is very good for this House. I believe I am one of the few hon. Members in this House who took time to read these two Bills as they were presented. These Bills were not a small time affair. They were very big. As I indicated, anybody who went through the Bills had a lot of problems. There were even cases of omissions and typographical errors. The decision to withdraw these Bills is commendable. This is because when we debate Bills which clearly have errors as we were doing, this puts the reputation of this House into question. I think a very good thing has happened, just as hon. Makali Mulu has said; you form companies before you dissolve them. So, it does not really make sense that we should be discussing the Insolvency Bill before discussing the Companies Bill.

Having said that, when we get to Bills which are very abnormal in terms of size, it is good that we make it a tradition that before we get to them, which is what the Departmental Committee on Justice and Legal Affairs has done, we make a report so that Members can be guided on how to go about it. This is because without that most of us may fail to participate in Bills, which have far reaching effects on how the affairs of this country are run; this will happen without our knowledge just because we have not been guided through the Bills. This way we will not be able to do justice to such Bills.

Otherwise, I thank the Leader of Majority Party for withdrawing the Bills so that they can be re-published so that Members can get a chance to look at them. However, as we re-publish these Bills, and I want the Leader of Majority Party to listen, the manner in which the Bills were presented here, in my view was not making it easy for those who would want to follow those Bills. We have complained about the manner of arrangement of Bills before and I hope as we republish we also look at it because it is not an academic exercise. We are just trying to help Members go through the process of Bill making in a way that they can understand.

Thank you, hon. Speaker.

**Hon. Speaker:** Sorry. I can see several other interventions but let me just draw your attention to the fact that under Standing Order No.140, there is no requirement other than the Member moving a Bill to apply to withdraw it, there is no requirement for

debate. So, for those of you who are intervening to say something, sorry. Even if you look at Standing Order 144 (2), once the application has been made it is just for the Speaker to satisfy himself whether or not the request to withdraw is an abuse or the process of the House. I am satisfied that the request by the Leader of Majority Party to withdraw the two Bills is not an abuse of the process of this House and therefore, I direct that the two Bills be withdrawn. So, there is nothing to debate. Can we go down to business because we cannot debate what is not business? I know you may also want to say something but it has been said by hon. Eng. Gumbo and hon. Makali and I think we should be satisfied. They have spoken I believe on behalf of most of us, that you have gone through the Bills and you saw that there was need really for an improvement.

Next Order!

Leader of Majority Party, the Floor is yours.

*(The Insolvency Bill and Companies Bill withdrawn)*

### *Second Reading*

#### THE PUBLIC AUDIT BILL

**Hon. A.B. Duale:** Thank you, hon. Speaker. I beg to move that the Public Audit Bill, National Assembly Bill No. 38 of 2014 be now read a Second Time.

Hon. Speaker, as you are aware, the Public Audit Bill is one of the legislations enacted by Parliament as a requirement under Article 261(1) of the Constitution of Kenya. This same Bill is among the six constitutional Bills that we have given an extension to until May 27<sup>th</sup>. Since this Bill touches on both Houses and it will end up in the Senate, the House Business Committee (HBC) that you chair felt that we give priority to this Bill and the one that follows in the next Order.

Hon. Speaker, as you will recall and I have said this Bill was extended by Parliament, this law is important in terms of accounting in the usage of public resources and it cannot be underestimated. Why do we need this? Within Article 261(1) of the Constitution, the Public Audit Bill is in line with the new Constitution. This Bill as presented before this House seeks to repeal the current Public Audit Act and it is in a new form. The Bill proposes to provide the functions and the powers of the Auditor-General or the powers of the Office of the Auditor-General in accordance with the relevant provisions in the Constitution. That office is independent. It is provided for in the Constitution and this Bill creates the systems and the powers that go with this office.

This is the summary of the salient features of the Bill. I will only go with the salient features for Members to understand. In line with the Constitution, Clause 3 of this Bill provides for the guidelines or the guiding principles and values to the Office of the Auditor-General in as far as discharging its functions is concerned. What are the values and principles that Kenyans expect of the Office of the Auditor-General as provided for in our Constitution?

One, the national guidelines and principles provided for under Article 10 of the Constitution are the guiding principles of this office. Two, the quality and freedom from discrimination as provided for under Article 27 of the Constitution are supposed to be a

guiding principle and a value to this office. The responsibility of leadership as provided for under Article 73 of the Constitution is one of the guiding principles to the Office of the Auditor-General. The principles governing the conduct of State officers as provided for in Article 75 of the Constitution is also a guiding principle to the Office of the Auditor-General.

Finally, the values and principles of public service as provided for under Article 232 of the Constitution is also one of the guiding principles to the Office of the Auditor-General.

Hon. Speaker, Clause 4 of this Bill establishes the Office of the Auditor-General as a corporate body in accordance with Article 253 of the Constitution. That means this office or this corporate body is capable of suing and also being sued. It is capable of acquiring, safeguarding, holding, charging, and disposing of movable and immovable property and doing the performance of any search or any action provided for.

Clause 7 of the Bill sets out the function and the powers of the Office of the Auditor-General in addition to the functions and responsibilities which are provided for in Article 229 of the Constitution. What constitutes Clause 7 of the Bill? What are these functions and powers that the Office of the Auditor-General is given under this Bill outside those provided for by Article 229? These are: One, the Office of the Auditor-General is supposed to give assurance on the effectiveness of internal controls, risk management and overall financial systems by all State organs and public entities. So, in terms of effectiveness of providing internal checks, internal controls, risk management, overall financial prudent systems by all State organs and public entities, that is the function of the Office of the Auditor-General.

Secondly, the Office of the Auditor-General under this clause is to undertake audit activities in State organs and public entities to confirm whether or not public resources; public money; Kenyans' money; the citizens' public resources, have been applied lawfully and in an effective and prudent way.

*[Hon. Speaker left the Chair]*

*[Hon. Deputy Speaker took the Chair]*

Hon. Deputy Speaker, thirdly, the Office of the Auditor-General has a function to satisfy himself that all public resources have been used and applied for the purpose intended and indeed that the expenditure conforms to the authority of such expenditure. Let me pick on the county governments, after budgets have been passed by county assemblies and approved by the Controller of Budget, the Auditor-General ensures that money has been used and applied for the right purpose.

Clause 8 of this Bill sets out the administrative functions and powers of Office of the Auditor-General in addition to those powers conferred upon him by Article 229 of the Constitution. This Bill gives the Office of the Auditor-General extra administrative functions and powers. This includes the function to develop an organizational structure and staffing establishment. There must be an organogram; a structure of Office of the Auditor-General that cannot be in a haphazard way. The structure will show where the Auditor-General, his deputy and others fall. This Bill gives him the powers to draw that



structure. Two, the Office of the Auditor-General has the power to recruit and promote qualified and competent staff.

Finally, subject to Article 234(4)(b) of the Constitution, the Office of the Auditor-General has been given extra functions and powers to determine remuneration and benefits of each of the members of staff, which are not provided for in the Constitution. The Auditor-General's Office under this Bill ensures that the Office carries out its work effectively.

Clause 9 of this Bill empowers the Auditor-General to do the following very important functions:- To conduct investigations on his own initiative. This is very important. The Auditor-General does not need a complainant. The Auditor-General does not need to be called upon by a public entity to carry out audit investigations. He has been given the powers under this Bill to use his initiative; walk to any public office and ask for the books of account. That is what we cannot see. The Auditor-General, under this Bill, in Clause 9 has been given power to obtain professional assistance, consultancy or advice from persons or organisations within or outside the Public Service. So he cannot complain that he has no staff and the capacity. This Bill gives him the powers to go out and get more professional experts or more consultants, either from the Public Service or from the private sector.

This Bill has given the Auditor-General powers to issue summons to a witness for the purpose of his investigations. Like the Ethics and Anti-Corruption Commission (EACC), the Criminal Investigations Department (CID) or Parliament, this Bill gives the Office of the Auditor-General powers to summon a witness for the purpose of his investigations.

Again under Clause 9, the Auditor-General's Office has been given powers to request any public officer to provide explanations, information, evidence and assistance in person and in writing. The Bill in Clause 10 cushions the Auditor-General's Office from any interference in performance of his functions. Clause 10 provides the Auditor-General with the cushion that he shall not be subjected to any direction or control by any person or authority in his performance and in determination of his functions under the Constitution. This Bill still gives more independence to the Office of the Auditor-General; that the Office shall not be subjected to any direction or control.

To ensure proper administration and management of the Office of the Auditor-General, Clause 12 of the Bill provides a new position of Senior Deputy Auditor-General to be recruited by the Office of the Auditor-General and appointed by the Public Service Commission (PSC). The Bill introduces a new position so that proper delegation of duties is taken care of under the Office of the Auditor-General.

Clause 13 of the Bill outlines the responsibility of that new Office because we do not want to have conflict between the Auditor-General and the new position of Senior Deputy Auditor-General. He will be the head of administration and management of the office and the accounting officer of the Office of the Auditor-General. So he will be like a permanent secretary. He will be in charge of budget, administration of human resource and the Auditor-General will carry out his main function as stipulated in Article 229.

Clause 29 provides for the process of preparation of budget estimates of revenue in that Office. Clause 21 of the Bill makes provision for the Auditor-General in exercising his functions. Clause 22 empowers the Auditor-General to do an examination

on bank accounts for the purpose of tracking any transaction. So the Auditor-General, apart from carrying out forensic audit, he has been given extra powers to track various bank accounts of people under investigation. In order to protect Kenyan citizens under the Bill of rights, in tracking the accounts, he must obtain a court order where he has to explain to the court what he intends to do.

In Clauses 25 to 28, it is clear that the Office of the Auditor-General is not a one-man-show in decision making. Part III of the Bill which comprises clauses 25, 26 and 27 seeks to establish something new called the Audit Advisory Board.

It is a board that will manage the person of the Auditor-General. This is so that he does not become too powerful or one who wants to micromanage everything. The board will advise the Auditor-General in the exercise of his or her responsibilities.

Clauses 29 to 30 of the Bill provide the types of audit processes and the types of audit. These include periodic audits, annual financial audits, performance audits, forensic audits, procurement audits and many other types of audits.

Clauses 41 to 45 of the Bill make provisions for the accounts of the Office of the Auditor-General. Clauses 60 to 66 contain provisions relating to offences and sanctions.

That is the summary of the whole Public Audit Bill.

Hon. Deputy Speaker, the Constitution of Kenya 2010 created serious independent offices outside the Executive. These offices were given powers to report to Parliament, either to the National Assembly or the Senate in as far as protecting public resources, public money and the Budget we pass are concerned. Which offices are these? These offices which are independent of the Presidency and the Executive are: The Office of the Auditor-General under Article 229 of our Constitution, Office of the Director of Public Prosecution (DPP), the Ethics and Anti-Corruption Commission (EACC) and that of the Inspector-General of Police. These institutions have been given powers under the Constitution so that they make sure there is independence in dealing with corruption, misuse of public resources and abuse of power. These institutions, in my opinion, have let down the people of Kenya despite the fact that they enjoy independence from the Executive, Parliament and the Judiciary.

Hon. Deputy Speaker, the biggest challenge facing our country since Independence is this animal called “corruption”. The people of Kenya in 2010 voted for a devolved system of Government. Some of us had never seen a tarmac road, proper healthcare, good schools and maternal healthcare in our regions for 50 years. All the social indicators were bad.

When you look at the newspapers today, Mandera County will be receiving KShs.9 billion, Garissa County from which I come will get Kshs6 billion while Wajir County will receive Kshs8 billion. These three counties will be receiving a total of over Kshs20 billion every year. When we speak, we do not want to speak about Governors’ private money or deal with their bank accounts but public resources. This is because I will never vie to become a Governor. No!

As Members of Parliament of the National Assembly we have the moral authority to defend and protect the Budget that we pass in this House. Devolution is under threat not from the Presidency, not from Parliament, not from the Senate but it is under threat from corruption.

With those many remarks, I hope the Auditor-General under this new law will make sure that public resources and money will be safeguarded. As I move, I ask the hon. Member for Nambale, hon. Bunyasi to second.

**Hon. Bunyasi:** Thank you, hon. Deputy Speaker. Thank you very much Leader of Majority Party for that passionate presentation of the Public Audit Bill, 2014. I rise to second this Bill. There are many important things that come before this House. One such important thing is the Public Audit Bill. We spend a lot of time in this House passing huge budgets and tracking how those monies have been spent in terms of whether or not the intended objectives have been met.

However, one office that goes to work as we rest and sleep is the office of the Auditor-General. We expect them to tell us whether money has been used appropriately in a manner that can give us time to rest and wake up.

What this Bill is trying to do is to remove the excuses that might arise, the excuses that the Auditor-General's Office might have in saying that they are unable to carry out their functions. This Bill substantially expands the space in which the Office of the Auditor-General is working. That directly emanates from the provisions in Articles 229, 221 among other articles in the Constitution. It is an extremely important Bill and I hope that Members will pay special attention to it when it comes before the House for debate. It is only through that, that we can assure ourselves that the trillions of funds that are being voted are indeed being used in ways that are consistent with the priorities within the Constitution and those of the Government of the day.

This Bill has several specific provisions which have been outlined by the Leader of Majority Party and I will not repeat them because we will be able to read them as we begin debate on this Bill. I will just highlight some of the elements that have been laid out in the proposed Bill.

The powers and functions of the Auditor-General have been laid out in Article 8 in great detail. The Auditor-General has no excuse whatsoever to say that they are limited in terms of what they can look at in public expenditures, except those that are security-related. For the rest of it and including all the devolved governments as well as any other institutions, this new Bill gives the Auditor-General powers to look into issues without any hindrance whatsoever. Clause 9 has laid out this in great detail.

In Clause 10, which I think is extremely important, and this has been touched on is the issue of the independence of the Auditor-General. There are many countries in this continent where the Auditor-General reports to a section head in the Ministry of Finance or such like places. We were lucky that in accordance with our current Constitution, the office has been set aside as an independent office. This Bill further reinforces the independence of the Auditor-General. In Section 249 (2) and (3) of the Constitution from which I will highlight one or two points especially the one which deals with the powers of independent commissions including the Office of the Auditor-General, with your permission section 249 (3) says:-

“Parliament shall allocate adequate funds to enable each commission and independent office to perform its functions and the budget of each commission and independent office shall be a separate vote.”

The Auditor-General is covered by this clause. He or she will have a separate budget so that they are able to discharge their functions without worry that they will be

restricted as they might have been prior to the promulgation of this new Constitution, probably by the Ministry of Finance and Treasury as used to be the case.

With this situation, apart from getting the authority, the Office of Auditor-General is also getting the freedom to have the budget that goes with it. This is so that they are not confined in any way. I hope that we will enable the Office of the Auditor-General to get adequate resources in the actual allocation of resources so that it can look at the 47 county governments, the national Government and other independent commissions including Parliament.

It is going to be very crucial indeed because the capacity of the Auditor-General has to be enhanced. The authority has been given, the budgeting and the resources that should go with it, hopefully, will follow suit. That is in Clause 10.

Hon. Deputy Speaker, Clause 11 lays out how the Office of the Auditor-General could be filled. It is a very elaborate mechanism prior to what the President may exercise in terms of appointment of the Auditor-General. It is open and competitive. It should be supported by the House.

Clause 21 deals with the issue of information. Many times, particularly as I sit in the Public Accounts Committee (PAC), there are people who worry about disclosure of information. They are bound here by oath and by law to release such information in accordance with the discharge of their function. That should give us comfort that, in fact, they will be acting only in relation to how the law has laid it out.

In Clause 22, the Auditor-General has been given powers which I think is very important particularly when we have issues of access to accounts. I know there are limitations of freedom and how far the Auditor-General would go in prying on people's private affairs, accounts and things like that. But in the discharge of the function and in accordance with the Constitution, the Auditor-General has now been empowered to access this information with a court order but hopefully such orders shall not be too restricted to enable the Auditor-General to tell us what has happened and what may be behind closed doors.

There is an issue which has occurred frequently that the entire audit establishment could go off-track and do witch-hunting. Clause 25 is intended to safeguard against that. It provides for an advisory board that has members from the Institute of Certified Public Accountants of Kenya (ICPAK), the Law Society of Kenya (LSK), public universities – I guess it is the representations of those public universities - the Association of Internal Auditors and the NGOs with NGO Council as representation. As an advisory team to the Office of the Auditor-General, we should help ensure that there is no inherent bias in the way the Office of the Auditor-General might function. This is a very good innovation and I hope it does not become a stumbling block but becomes a facilitative arrangement that will enable the Auditor-General's Office to discharge his duties without undue hindrance. It gives the Auditor-General's Office the powers to draw conclusions in accordance with their own professional judgment, in accordance with the Constitution and all the attendant laws.

In Clauses 41 to 45 - I will skip a number of them so that I do not repeat what has been said - particularly clause 41, if we can emphasize that it provides the Auditor-General's Office with how they might be able to look at the funds that are appropriated in the budgets. This has been a challenge to the Auditor-General because they have argued

that given the resources that are appropriated for them from the Budget, they are limited in what they can do. This allows them to charge fees for what they might be able to do. It gives them that extra flexibility that they have always been asking for, of whether they can charge fees; whether they can seek fees from clients; seek for funding for capacity building from any other source they may have but this will be fully accounted for. In some, it enables the Auditor-General to look for other innovative ways which they can build up their capacity in discharging the enhanced function which they have been granted. That is a very good innovation in the Bill.

One of the challenges has been that the Auditor-General's Office previously had restrictions in terms of how they might generate information. The fact that they can go into any issue on their own free will, on their own volition and their own initiative, is important. They do not have to wait to be informed officially of what has arisen. That is a clause that should give us great comfort because there are many things that arise. Within the provisions of the continuous audit they have been allowed to do, they can pick up any issue and run with it, with the enhanced capacity they have got.

In short, this Bill if passed with amendments in some sections as I am sure there will be, will give us a new era. Whoever is in that Office will work within the Constitution and will be bound only by the Constitution. Given those fairly assured provisions in this Bill, I beg to second this Bill.

Thank you.

*(Question proposed)*

**Hon. (Dr.) Simiyu:** Thank you, hon. Deputy Speaker for this chance to contribute to this debate. Throughout the Recess, I have been reading this Bill. I have actually read it four times and I am scared. While Clause 10 appears to give the Auditor-General independence, very many clauses in this Bill slowly remove that independence. We are creating a toothless bull dog. The problem in this country as the Mover and the Seconder have stated and we all know it is corruption. One major office that can help us fight that menace is the Auditor-General's Office. It is imperative that when we create a law to govern that Office, that law actually responds to Kenya's needs. Kenya's needs are to fight corruption. This law, while it is due constitutionally, appears to imply many other things.

Let us start right from the appointment of the Auditor-General. The appointment of the Auditor-General is usually covered in the Constitution and it states who should be the Auditor-General. In Article 229 of the Constitution, it is very clear that the President will nominate, Parliament will approve and the President will appoint. Now, we have brought in the Public Service Commission (PSC). Wherever they came from, I have got no clue. We are starting that convoluted system of appointing people, yet the Constitution is very clear on how the Auditor-General should be appointed. Now, we are slowly removing that mandate from the President and the National Assembly and bringing in another animal called the PSC with a selection panel. That does not really go well and I think we need to be very careful. All places where we have had that kind of convoluted appointment, we have ended up with problems. Apart from that, we have said the Constitution is very clear on that and so we need to amend that before we say that it is

unconstitutional.

There is the issue of vacancy in that office. This law is providing for a situation where the office can be vacant for up to 12 months and then the President appoints somebody to act in that office for 12 months. The person acting can do anything that the Auditor-General is supposed to do. Why would we leave such an important constitutional office vacant for one year? We are saying it can be vacant for 12 months; that is one year. I do not think that provision is correct. And then, what scares me most is that even though we say that the Auditor-General is independent, we have allowed the Attorney-General to also decide what the Auditor-General can publish and what he cannot publish. That means that the Auditor-General will actually be under the control of the Attorney-General in his duties. So, we have slowly removed his powers. In the Ninth Parliament when His Excellency the President was the Leader of the Official Opposition, it is when the Anglo Leasing matter hit the Floor of the House and hit the national media.

Hon. Deputy Speaker, all those Anglo Leasing fiascos were from the Auditor-General and it involved auditing some of the security systems. Here we are saying that the Auditor-General even as he audits those security systems cannot release that information. He cannot publish that information. If he cannot publish that information and somebody has corruptly handled the security docket, how will you get that person to book when everything is under secret? Is that person going to be taken to court under secrecy or will this matter have to be published? I think we are trying something here which to me looks like we are trying to cover up some future misdeeds.

We are saying here in Article 72 that in performance of his or her functions and duties under this Act, the Auditor-General may not question the merits of a policy objective of a Government or any other State organ or public entity. He may not question the merits. If that policy is the cause of loss of public funds and the Auditor-General cannot question it, what have we done? I plead with this House. We are setting up a law for the future. We want to rid Kenya of this corruption menace. This kind of Act we are trying to do here will not do that work. In fact, we are emasculating the Auditor-General. We are making him a toothless bulldog to the extent that when he goes to audit a security organ, he is only allowed to send officers of his level. All the staff of the Auditor-General carrying out audit under this section shall undergo a vetting process carried out by the appropriate security agency and shall take an oath of confidentiality and such officers shall be a grade equivalent to Deputy Director of Audit. So only Deputy Directors of Audit can go and audit security organs. We know very well one professional needs several technicians in order to function. We are sending this senior auditor to audit a security installation without technicians to assist him because the law does not allow the technicians to go there. For heaven's sake, how are those people going to work?

Then we want to stamp out corruption. One of the main problems here is that the money that we appropriate for certain functions ends up not fulfilling those functions. It does not perform. One of the ways of auditing is a performance audit; in other words a value for money audit. Here we are saying the Auditor-General may do a performance audit. The Auditor-General shall do a performance audit if we really want to stamp out corruption. If we say he may, then he may chose not to and then we may not get the performance audit that we want. The intention is good but I think people with ulterior motives were allowed near the drafting of this Bill and they have thrown some provisions

which make the Auditor-General a toothless bulldog who will be churning out material that we cannot use. If they decide to buy some more ships like the famous Anglo Leasing ship costing way above what it should cost, the country will never know because the Attorney-General will tell the Auditor-General that he cannot publish that. So the Auditor-General will be acting under the direction of the Attorney-General. He will not be independent. That clause 10 is window dressing.

Let us take this matter seriously. This is the last chance for Kenyans to close the door of corruption. If not close it, narrow it so much such that the fat ones cannot go through; it is only the thin ones that can go through. This is our chance. If we allow this to go as it is, this Parliament will live to regret it.

I oppose.

**Hon. Kipyegon:** Hon. Deputy Speaker, I wish to take this opportune time to say that I rise to support. The major reason why I want to support is that this Bill, the Public Audit Bill, has very serious implications especially on the system at the Office of the Auditor-General. Although there are so many discrepancies in this Bill, I believe we should have time, as Members of this House, to go through it and make some serious amendments which can make this office and Bill come out as an important document and one that can safeguard the major interests of the people of this country. We have had several complaints in this country and especially on matters that deal with audit. We have always been complaining here and there; we are complaining in the offices of the people working in the national Government. We are also complaining about the people who are holding offices in the county governments. We have always been looking for means and modes that can be used to correct the anomalies and corruption which has bedeviled this country for a long time.

I believe this Bill will come in handy and like I said we will need to make some amendments here and there but I think as it is, it is a very important document that can come in handy and solve some of the few problems that we have and that have bedeviled this country. The functions of the Auditor-General, I believe with proper funding can be done. In most of the cases, there are complaints. The Office of the Auditor-General complains that they do not have money; they do not have teeth to bite. I believe this Bill will be handy to safeguard and help them to solve the problems that we are facing.

All we know is that the duties which are meant to be discharged by this office are among others the sections that are articulated in the Constitution. This Bill will give breath to some of the articles in the Constitution which have been hanging and nobody has dared to deal with them. When you look at Article 27 which talks about equality, equality and freedom from discrimination, the issue of discrimination in this country has been rampant both in political arenas and economic arenas. The major part which we believe the Auditor-General can look at is the economic arena. This is why we normally have conflicts in several parts of this country. The reason why we have unrests in several parts of this country is majorly because of inequality in resource sharing. The formation of the country right from the national Government to the county governments has discriminated immensely against several people. There are people in this country who do not even know there is a Government. There are people in this country who do not even know that we have a President. There are people in counties who do not know that they have county governors simply because they do not see a single resource close to them

and because they do not see a single project in their areas because they have problems that nobody cares about. This is because of inequality. This is because either the national Government has decided to discriminate against others or other county governments have also decided to discriminate against others.

These are matters that are leading to fights and clashes and people to kill each. There is a very serious discrimination.

Hon. Deputy Speaker, with regard to the problem that we have in Kapedo right now, most people would think that it is about people fighting for some parcels of land or some small things. On the contrary, it is because people are fighting for resources. Nobody has looked into this matter to ensure that the people in these areas also benefit. The major function of the Auditor-General is to ensure that there is equality and freedom from discrimination against the issues articulated in Article 27 of the Constitution. I would like to support this Bill because of that. Actually, it will depend on this House that we do not go back to create or amend laws--- It is for this House to ensure, during the Committee of the whole House, that the Office of the Auditor-General is fully armed and equipped with the necessary laws. That way, we will not have the Auditor-General not recommending prosecution of people we believe have committed crimes. This House needs to look at this Bill seriously so that it can introduce those particular issues.

Hon. Deputy Speaker, another serious function which has to be discharged by this office involves the responsibilities of leadership provided for in Article 73 of the Constitution. As you all know, Chapter Six of the Constitution has always been a thorn in the flesh of Members of the National Assembly, Senators, Members of the County Assemblies and members of the Executive. Therefore, when we talk about giving full powers to the Office of the Auditor-General so that it also gives us guidelines and principles in accordance with Chapter Six of the Constitution we will be certain that we have an organ of Government that can seriously question the integrity of people who occupy offices of the State in this country.

When we talk about corruption in public offices and the bearers of those offices, there are people who think that they are untouchables. There are people who think that they are above the law. There are people who think that nobody can audit them. There are those who think that nobody can look at their functions. I am one of those who will ensure that this Bill passes only after we have empowered the Auditor-General to deal with this menace that we have in this country. We cannot be running around every now and then budgeting money to be used by the national Government and the county governments and then eventually those monies get lost without anybody raising a question. I want us to look at this Bill properly so that we can give teeth to the Auditor-General so that he can look seriously at the matter of Chapter Six of the Constitution concerning public officers who should be responsible for actions taking place in their offices.

I talk with pain as I look at the matters that are happening in most of the counties. We are told by recognized bodies such as the World Bank of how money is used by the counties. There are counties that receive billions of shillings, but they only use a small percentage, say, ten per cent. It is the case in my county. We want those Governors questioned. Nobody should tell us that certain Governors are above the law. We want the Auditor-General to look into this issue. Last week, the Auditor-General visited Narok and



instead of auditing the matters we had requested him to look at, he wanted to call for a *baraza* to discuss issues. The Auditor-General is supposed to look into the---

**Hon. Deputy Speaker:** Your time is up. Hon. Makali Mulu.

**Hon. Mulu:** Thank you, hon. Deputy Speaker, for giving me a chance to add my voice to this interesting debate. This is a very important Bill. As has been stated by the Mover, it is actually a constitutional requirement. So, enactment of this law is in fulfillment of the constitutional requirement. I think that is why, as a House, we need to support this Bill.

It is important to note that amendments will be necessary in some of the clauses. Looking at this Bill, there are some good clauses which are going to empower this office to do the work expected of it by the Constitution. In Clause 3 of the Bill we have values and principles that support this Bill. This is a constitutional requirement. This Bill is well-grounded in the 2010 Constitution; actually the anchorage is quite strong.

The Bill re-emphasizes the functions of the Office of the Auditor-General. Function (c) is very interesting to me because it states that one of the key responsibilities of the Auditor-General is to satisfy himself or herself that all public money has been used and applied to the purposes intended and that all expenditure conforms to the authority of such expenditure. This makes a lot of sense to me. I am a member of the Budget and Appropriations Committee and I know that every year this House appropriates funds to different Government departments. By the end of the year it is the expectation of this House to be told whether we have got value for the money that we allocate to these departments and Ministries. The only office which has the power and capacity to do that is the Office of the Auditor-General. That is why this Bill is important. It is restating that fact: That the Auditor-General has that responsibility and is expected to carry it out effectively and efficiently.

Clauses 11, 12 and 15 talk about the staffing levels of that office. The clauses state clearly who should be hired and who should not be hired in that office. It is important that even as this is being done we get people of integrity into these offices. One of the challenges we have been having in this country is a situation whereby we have auditors whose integrity is questionable. Instead of them going out there to carry out audits and look at the books objectively, they go out to look for mistakes so that they create space for rent-seeking. The staffing of this office should be taken seriously. This Bill is trying to do that. We need to get the right people hired to work in this office.

Hon. Deputy Speaker, Clause 10 talks about the independence of the office and despite the fears being expressed by my colleague here that, that independence seems to have been diluted, this is one of the areas that we are going to make amendments to ensure that the independence of the office remains intact. This is because it is very important. If we allow any room for interfering with the performance of that office then, as a country, we are going to be doomed. That is because it is the only office which can tell Kenyans whether we are getting value for money through performance auditing. There are a number of audits that have been cited here. If we could really go through them and ensure that the independence of that office is guaranteed, then we are sure Kenyans will get value for money. That is what is being proposed in our Constitution and also in the Public Finance Management Act.

Hon. Deputy Speaker, another interesting aspect of this Bill, and which also makes me support it, is the issue of access to information by the Office of the Auditor-General. Clause 1 says that powers will be given to that office to obtain the information necessary for performing its duties. I think this is critical. In a situation where you are conducting an audit and information is not given to you as an auditor, then you are not able to make that independent opinion in terms of how funds have been used. So, to me, this Clause is very important and it is one that we should retain in this Bill so that the Controller and Auditor-General is able to access information when he requires it. When information is not availed, there are also sanctions that have been mentioned. So, to me, that is an important aspect of this Bill.

Hon. Deputy Speaker, the other thing which is of interest and which also makes a lot of sense is when you look at Clause 24 of this Bill. It makes provisions for the Auditor-General to seek professional assistance and also consultancy, meaning that where the Auditor-General, after doing an assessment, finds that they do not have the capacity required to conduct an audit in-house, this Clause actually makes provision that the Auditor-General can go out there, look for the right professionals in that particular area, hire them either as consultants or on a daily basis, so that the particular gap which the office has is dealt with through external support. I think that is very important. It is very difficult to find all the required competencies in-house. At times, you will want somebody to look at very complicated areas. The Auditor-General audits the whole Government. Where they are doing technical work like engineering, you might find that they do not have auditors who have been trained in that area. But through this provision, they can go out into the market, hire somebody on a short term basis and provide that particular specialised expertise so that we get the right output. So, to me, that is very important.

Hon. Deputy Speaker, as I conclude, when I look at this Bill, it means that once it becomes law, then this country will have the most appropriate legal framework for the office to operate. However, at the same time, we have realized that some of the reports of the Auditor-General come out very late and it is very difficult to remedy the situation. The reports are produced three or four years after the crimes are committed. Therefore, it becomes very difficult to take action on the culprits. In such a situation, it is like flogging a dead horse. After enacting this law, we need to make sure that the reports of the Auditor-General are prepared in a timely manner. That way, if we want to take action on anyone, that action can be taken in a timely manner. That person will be punished when he or she is still in office. We cannot wait and punish people who have retired or already dead in their graves! You cannot do anything. So, timely production of those audit reports is going to be very important to this country. It is something that we must insist on as a House so that we do not get reports which do not add value to our work.

Hon. Deputy Speaker, with those remarks, I support the Bill with amendments. I will be proposing them as we move forward.

Thank you.

**Hon. Deputy Speaker:** Thank you. Hon. John Nakara.

**Hon. Nakara:** Thank you, hon. Deputy Speaker. I stand to support this Bill. There are three things that Kenyans have been concerned with over the Office of the

Auditor-General. The first one is about its independence. The second one is about its effectiveness and the third one is about implementation.

Hon. Deputy Speaker, all over Kenya, whenever you hear about the Auditor-General's report, people say that that report is not independent. Others have claimed that some powers have come in and made the reports irrelevant.

Hon. Deputy Speaker, this law is now giving the Office of the Auditor-General powers of being independent and Clause 10 says that nobody shall subject, direct or control the Office of the Auditor-General. This law allows the Office of the Auditor-General to perform its functions independently without any interruption or interference.

Hon. Deputy Speaker, for us to gain or benefit from the reports of the Auditor-General, independence must be practised in that office. Let the Executive leave the Office of the Auditor-General to do its work independently. Many audit reports have been written but the problem is that whenever they come out, they are diluted and have no back-up. Some powers come in and dilute them so that in case they go to court, that particular person cannot be jailed. So, this law has now empowered this Office of the Auditor-General to be independent.

Hon. Deputy Speaker, when we talk about effectiveness, some staff in the Office of the Auditor-General are not professionals. They are not trained and when they write reports in the counties or constituencies, they have no professionalism in their language. The way they write the reports, even a layman who has never gone to school or who has never done an audit can do better. Such reports cannot prove that a person has done anything wrong. They make the reports not to be valuable to whoever is reading them.

Hon. Deputy Speaker, now that this Bill has empowered the Office of the Auditor-General to employ a deputy and other staff, we hope it will take those staff to the counties. We shall have people at the county level to enable the national office to get the right information. Sending staff from Nairobi to go to the counties or constituencies to do the audit is wrong. That is because some of those people have no background information of those areas. Some of them do not even go to see the projects. Some of them come to town and look at the books in the Constituencies Development Fund (CDF) office or in the county office. They do not go to see those projects; whether they really exist or not. Why? Because they come in a hurry! They do not know the terrain, culture and environment of those places very well. So, as we are going to have staff working under the Auditor-General, we must also take some of those staff to the county levels so that their audit reports can help the national office to establish the truth.

Hon. Deputy Speaker, when we talk about summoning of the witnesses to prove reports, the Auditor-General has now been given power by this law to summon anybody that he feels has information to come and give it. Earlier on, the Auditor-General did not have that power to summon anybody. Now, through this Bill, he can summon anybody to give information.

Hon. Deputy Speaker, on the issue of implementation, we have many reports in this country which have been done by the Auditor-General, but they have never been implemented. That is because after the reports are written, they are filed and forgotten. A lot of public resources in this country--- The people who have "killed" some institutions like Mumias Sugar Company and others are still leaders in this country. That is because nobody implements the Auditor-General's reports. If we were serious as a nation and

implemented the reports of the Auditor-General, some guys who are now leaders in this country could have been jailed. That is because they have destroyed and “killed” those institutions and now Kenyans are suffering. Some examples of such institutions are Pan Paper Mills in Webuye and Mumias Sugar Company. The guys who did those wrongs are still out here doing their businesses as usual.

On the issue of the implementation of reports, investigations must be thorough. That is because when you want to prove that somebody has done wrong or misused public resources, you must do thorough investigations.

The problem in the Auditor-General’s Office is that the people who are sent out to conduct audits do not do thorough investigations. They just go and do the normal report-writing and when they come back, they say they have done investigations. When the report is tabled or is taken to court, that particular person cannot be found with any mistake. That is because there were no thorough investigations. We want to encourage the Office of the Auditor-General to do thorough investigations whenever it is given an opportunity to audit any office, whether it is the Constituencies Development Fund, the county governments, national Government, parastatals or public institutions. They should do thorough investigations so that the audit reports can put somebody at the right place.

I want to conclude by saying that this Bill will actually promote accountability. That is what we have been crying for. We need every public servant to be accountable. Whatever money you have been given by the public, you must be accountable. You must not refuse to appear before anybody, even a Parliamentary Committee, because you are accountable. We need to adopt the culture of accountability in this nation so that everybody who has been given a responsibility becomes a steward of the resources of the people of this country. They must be accountable. If it is discovered that he or she has misused or mismanaged public resources, that particular person must be denied public office so that it becomes a lesson to others.

This law promotes accountability. It promotes good governance. The resources we have in this country are a lot, but the governance of the resources is the problem. We do not know how to govern those resources. That is why the priorities in some counties are not aligned with the needs of those areas. They spend a lot of money in paying salaries or going for trips and yet, the communities of those particular counties are suffering. Water is not there; roads are bad and education is low. We do not have good governance. Our resources are there but how to govern them and put them to the right need is a problem. This law promotes good governance and that is why I support it.

Finally, this law reduces and eliminates the wastage of public funds. If this becomes a law in this country and the Office of the Auditor-General implements and follows it very well, we will eliminate the wastage of public resources. We will now utilize our resources according to the needs of the people. We will not use our money for going for trips and parties. We will use our resources to benefit the locals.

Hon. Deputy Speaker, I support.

**Hon. Deputy Speaker:** Hon. Kang’ata, you have the Floor.

**Hon. Kang’ata:** Thank you, hon. Deputy Speaker. Allow me to raise about six issues.

The first issue is in regard to the issue of the independence of the Auditor-General. Clause 10 of this proposed law provides:-

“The Auditor-General shall not be subject to direction or control by any person or authority in carrying out his or her functions under the Constitution or under this Act”.

This Clause has been lifted from the Constitution; the enabling provision in the Constitution which establishes the Office of the Auditor-General.

Clause 40 (1) provides:-

“The Auditor-General shall not include particular information in a public report if:-

(b) The Attorney-General has issued a certificate to the Auditor-General stating that, in the opinion of the Attorney-General, disclosure of the information will be contrary to the public interest or for any of the reasons set out in subsection (2)”.

It is my humble opinion that these two clauses clash. I also hold the view that the original clause which gives the Office of the Auditor-General the independence should supersede the second clause. Why do I say so? The second clause appears to give the Attorney-General power to block some information. To me, that is tantamount to control and direction. The Attorney-General appears to have that power under the second clause to give direction to the Auditor-General. In my opinion, this is illegal and unconstitutional to the extent that the first clause has been lifted from the Constitution.

So, I hold the view that the second clause, that is Clause 40(1)(b), should be amended so that it is the Auditor-General who would have the last say on issues which should be deemed as being confidential.

The second issue is the one that was raised by my colleague, Dr. Eseli, about policy. Clause 72 of this Bill provides:-

“In performance of his or her functions and duties under this Act, the Auditor-General may not question the merits of a policy objective of government or any other State organ or public entity”.

Allow me to support this Clause. I concede that this Clause is a very funny one. It may appear as if it is in conflict with another clause, that is, Clause 35; which provides:-

“The Auditor-General may conduct performance audit to examine the economy, efficiency and effectiveness with which public money has been expended pursuant to Article 229 of the Constitution”.

The question we are considering here is: What is policy and examination with regard to economy, efficiency and effectiveness of the use of public money? The reason I feel the Auditor-General should be constrained so that he does not enter into the realm of public policy is because, as a matter of fact, those people who have the legitimacy to generate public policies are the elected representatives of the people, that is either parliamentarians, members of the county assemblies, the governors or the Presidency. To allow a technocrat to enter into the realm of policy issues will be illegal and unfair.

Allow me to give you an example. I saw a certain audit query in a Constituencies Development Fund (CDF) Report, where the auditor was saying that the CDF bursary fund should not be employed to give *boda boda* licences. According to me, when you see Members of Parliament using bursary fund to give *boda boda* licences, that is a policy issue.

That should be left to hon. Members to decide whether to use bursary funds to give to secondary schools, to college students or to *boda boda* people. But when you see an auditor extending his power, appearing to question policy decisions of duly elected people, I think that should be restrained and, therefore, I support Clause 72 which expressly prohibits him from entering the realm of policy decisions. I also feel that, that Article does not in any way offend the first Article, Clause 35, in respect of performance audit. I believe performance audit is strictly restricted to issues of efficiency and effectiveness of employment of public money, but it has nothing to do *per se* with policy objectives. Therefore, on this one, with all humility, this is a good law to the extent that it constraints the auditor not to enter into the realm of policy discussions.

Hon. Deputy Speaker, allow me to go to the third issue regarding security organs; that is Clause 40 of the Public Audit Bill, 2014. Clause 40 deals with issues relating to auditing of national security organs. To that extent, it appears to restrain or to give circumstances under which the Auditor-General should not disclose information relating to security organs. There are legitimate reasons why that may be desirable but on the other hand, we all know that security organs at times have become the conduit of corruption and, therefore, these clauses should be drafted in such a manner that we do not exclude auditing in totality to various security organs. In that regard, I hold the view for instance, that Clause 40(2)(d) should be deleted. What does it provide? It provides and I read:-

The Auditor-General may exclude information from an audit report under Sub-section (1)(b) above, for the following reasons:-

“(d) it would unfairly prejudice the commercial interest of anybody or person.”

What is prejudicing the commercial interest of anybody or person? To me, that clause has been drafted in very general terms. If there is every possibility that, that clause can be used generally to kill all forms of audit reports, I do not see why we need to protect anyone's commercial interests. Therefore, to avoid generality in a law which can then be construed negatively and kill the entire Bill, this clause should be amended.

I also propose that we should improve this Bill by providing for offences. Clauses 21, 22 and 23 have set out various powers of the Auditor-General. For instance, he or she has the power to obtain information from others, the power to examine bank accounts and out-sourcing audit services. But it does not contain offences in the event that, for instance, those powers are not adhered to. Therefore, without creating offences, there is every likelihood that the functions of the Auditor-General would be curtailed because there will be no sanction if, for instance, you do not provide certain information to the auditor.

There is also the issue of Clause 41. This one is in respect to the fees payable to the auditor. I hold the view that there should be more clarification as to why an auditor should be charging Government money. I thought the Auditor-General gets money from appropriations from Parliament and, therefore, he should not charge the entities that he is going to audit---

**Hon. Deputy Speaker:** Your time is up! Let us hear hon. (Prof.) Nyikal.

**Hon. (Prof.) Nyikal:** Thank you, hon. Deputy Speaker, for giving me this opportunity to express my opinions on this Bill. The Public Audit Bill comes from a background that is well known to us; that of corruption. We all know that corruption is

the biggest threat to our country as a State; our existence as a State and a threat to our development as a nation. The Constitution recognises this and, therefore, establishes the Office of the Auditor-General in Article 248(3) of the Constitution on which the whole Bill is based. Therefore, this Bill becomes extremely necessary to that extent.

Our Constitution has also created massive administrative changes in the country with county structures being devolved right down to the wards. Those structures are yet to be established while some are being established. With that, huge amounts of money has been devolved to those structures and, therefore, it is extremely important that we have an Act of Parliament that creates a strong independent, well structured and well funded institution. This Bill does a good job in doing that.

In Clause 4, the Bill establishes the office as a corporate body and that will, therefore, give it the independence that is required for the audit office to do the kind of jobs we need to reduce the level of corruption that we see in this country. I have said this before and let me say it again because I have been in positions to know this. In this country, if we could get rid of corruption; if we could use public funds the way we should and the way we use our own funds, I can say without any fear that we can have free education from primary to university levels. It is something that has been possible in the past. In the 1970s, university education was, to a large extent, free. Even higher secondary education was free.

We could have good health services that are available at no charge to the citizens. It is possible. Up to 1978 and 1980, the maternity service at Kenyatta National Hospital was the same, if not better, than the maternity services at Nairobi Hospital. That was done through public funds. Therefore, we must make this Bill as strong as possible. The structures that it is creating and giving independence are extremely important.

Clause 8 provides for qualifications and recruitment of people. If we have to have an audit structure that will benefit this country; that will fight and hopefully kill corruption and reduce it to a minimum level, we need well qualified people who are employed purely on merit and whose qualifications can be verified. I think that is provided for in this Bill.

Clause 7 gives the functions and the powers of the Office of the Auditor-General. It gives it the power to effect Chapter 6 of our Constitution in terms of integrity. I think that is something that this country is dying for.

Clause 8 gives the Bill administrative structures and development of an organisation structure. As hon. Members have said, we do not need an audit structure that is based in Nairobi and which, from time to time, sends people out there to conduct audits. We need structures to be on the ground. Other funds and administrative structures are now devolving.

On the general powers of the Auditor-General, he or she will conduct investigations on his or her own initiative.

We are used to issues in the past where auditors have been sent to find out what was wrong. More often than not, they are sent when it is too late. Therefore, if the Office of the Auditor-General is now empowered to initiate audit on its own, that is something that the country really needs. In the past, we have been looking at measures when things have gone wrong. I believe what we need most - and this is provided for here - is that we should have preventive audit. I always say that it was always amazing for me when I was

in the Executive. Many times, Permanent Secretaries who had internal auditors would read about corruption in their Ministries from newspapers, while there should have been preventive audit measures that would have warned them in advance that things are going wrong. I think this Bill will strengthen us in that way.

I know that we have noted some misgivings with Clause 10, but it also gives the independence that the Auditor-General requires. I know that colleagues have indicated that Clause 40 actually tends to take away that. I concur with that and, in my view, the whole of Clause 40, maybe, with the exception of Part 2(c), may need to be deleted. We will come to that. I find that with the limitation of time - and this being a constitutional Bill - it is a Bill that we need so much although it has those limitations. I support this Bill, but with the full knowledge that we will need to amend very many parts. We will have to look at it seriously and amend it. But other than that, I support this Bill

**Hon. Deputy Speaker:** Let us have hon. James Kimaru.

**Hon J.K. Bett:** Thank you for giving me this opportunity. I want to say that this is a very important Bill. I rise to support this Bill. I am impressed to see that the Bill that is now before Parliament has been synchronised to be in tandem with the present Constitution of 2010. In my own opinion, this Bill will be a game-changer in the economic development of this country. We all know that both in the national Government and the county governments, there are so many leaking taps. There are so many incidences of corruption that take place. The result is that when we disburse funds either to counties or even within the national Government, because of those leaking taps, the economic development cannot take place.

The other day we saw the World Bank Report. It was giving an analysis of how counties have been able to put their monies in development projects. We have realized that many counties set aside very little money to economic or capital projects. I can see that this Bill as it is, if it is enacted, it can be a vehicle that will assist in doing oversight for our funds. I am impressed by the fact that the Office of the Auditor-General as per Clause 10 will be deemed to be independent. It will be undertaking its audit activities without any partiality, prejudice or fear. The audits will be very objective.

I want to insist on the issue of capacity of the Auditor-General's Office. With the creation of the 47 counties, the Office of the Auditor-General has never had sufficient capacity to undertake audits for all - the county governments and the national Government. I will propose some amendments on how that office can be allowed to recruit enough qualified auditors who will beef up capacity for the Auditor's office.

I have an issue with Clause 5 as regards the qualifications for somebody to be recruited as the Auditor-General. We will be doing amendments later on. However, other than telling us that he must be a Kenyan citizen who must satisfy Chapter Six of the Constitution, I take issue with Clause 5(c) where it says that he must hold a degree in finance, accounting and economics from a recognized university. I think in view of the level of education in Kenya, we need to be very specific and raise the bar so that somebody who qualifies to be the Auditor-General, other than being qualified in those fields, we must specify that he must have a Master's degree and above. This is to ensure that we have a more serious, qualified and competent person who will be able to oversee proper use of Kenyan resources.



As regards the creation of vacancy in the Office of the Auditor-General, I am happy with the conditions that give rise to a vacancy in the Office of the Auditor-General in Clause 11. I have seen that death can be one of them and when somebody resigns. However, I will be introducing other amendments so that we set an age limit. This is to ensure that you can exit if you are a sitting Auditor-General based on age limit. This is to pave way for more youthful, dynamic and vibrant auditor-generals who are able to drive the audit of this country to great heights. Otherwise, I support. I want to conclude by asking that even as we do this, we should be asking the authorities to implement audit reports that have been done in the past. There are so many audit reports gathering dust on shelves in counties and the national Government. Many good recommendations are done both at audit level, but they are never implemented. So, we will be putting up amendments later on. This is to ensure that audit reports are implemented going forward. I take this opportunity to say I support.

Thank you.

**Hon. Deputy Speaker:** Let us have hon. Naomi Shaban.

**Hon. (Dr.) Shaban:** Thank you, hon. Deputy Speaker. I also rise to support the Public Audit Bill of 2014 and add my voice to what my colleagues have said. It is not enough for us to talk about independence of an office. There is more to it than just talking about it. An office like this one should be well equipped, staffed and taken care of so that it can work properly. It is not enough to talk about independence if you are not going to give them enough funds to recruit enough staff. With the coming in of the new Constitution, this Bill is long overdue because it gives the powers and the kind of framework that is required to help that office to perform its duties. The duties are more because of the county governments. They have more work. There is a lot of work to be done. It needs to be looked at very seriously. The powers that the Auditor-General should exercise should be able to help the Government or the Executive to stop the corruption which is ongoing everywhere and rampantly in our country.

In Kenya, we do not believe our own. We have a habit of listening to only the international communities. When they speak, that is the time we jump and say: "Yes, these people have audited." I believe that the Auditor-General has been trying to do a very good job under very difficult circumstances. This is now the time we are really going to give him the space he requires. We are going to give him the financial capacity that he requires so that he can have a well-established office.

Hon. Deputy Speaker, it is not a secret that, sometimes, politicians interfere with the recruitment of those office holders. I would ask everybody to sit and wait to see how we will be filling those positions and more so, now that there is going to be an advisory board which is going to assist in making sure that the independence of that office is really well-rooted and founded in our new Constitution. We need officers who can go out there to the counties to do proper audits and see where the funds have been utilised. It is not enough for us to be fighting as politicians when there are professionals like those ones who should be going out there to find out what is going on in the counties. Even the preliminary reports that the Auditor-General has been giving have not been taken very seriously.

Hon. Deputy Speaker, I beg to support.

**Hon. Deputy Speaker:** Thank you, hon. Naomi Shaban. Hon. Ronald Tonui.

**Hon. Tonui:** Thank you, hon. Deputy Speaker, for giving me this opportunity to support this Bill. I believe this is a very important Bill which will guide the use of resources in this country. It is quite unfortunate that when we are discussing this very important Bill, the House is nearly empty. All the same, we must transact this business. I believe this Bill will assist in strengthening the Office of the Auditor-General so that public resources can be used well. Without using those resources well, our people will not be served well. That office is very important because it deals with losses of public funds so that the services that are being enjoyed by our people can be enhanced. It will ensure that we get better roads, health services, education and all those other services. That can only happen when we have good accounting practices in this country.

I am happy that this Bill is capturing issues of technical importance of that office. It should recruit people who are highly qualified to produce up-to-standard work. I believe those people should also be well remunerated so that they do not engage in corruption. Currently, auditors engage in corruption when they visit various offices. They are accommodated somewhere, taken care of and even given certain allowances. That is a way of comprising them in their duties. I believe that if there is adequate remuneration to those people, that office can work effectively.

I am happy that this Bill is going to promote issues of values and principles of public service in the recruitment of staff. This Bill talks of fairness and transparency in the recruitment of staff. If we recruit people into the Auditor-General's Office using corruption, then we can expect nothing else but corruption to come out of that office. So, those principles should be well taken care of.

I am happy when I read Clause 9. It is talking about the independence of that office. The Office of the Auditor-General needs to be very independent especially when it is initiating audit activities. The Auditor-General should act on his own initiative and not to be pressurised by any quarter to go and audit some particular institution. He should be able to initiate that independently and not to be manipulated by anyone else because that will bring a manipulated report. Under the same Clause 9, the people working in the Auditor-General's Office are also expected to practise professionalism. I believe that is a good thing to be captured in law. The Office of the Auditor-General is also being enhanced in terms of powers to summon witnesses so that it can get real information on what is going on in public institutions. It can also demand for an explanation and information on the issues which they are dealing with.

I am also happy that there is a clause that captures the position of Acting Auditor-General---

**Hon. Deputy Speaker:** Order, hon. Tonui! There is a point of order by hon. (Ms.) Sunjeev Birdi.

### QUORUM

**Hon. (Ms.) Sunjeev:** On a point of order, hon. Deputy Speaker. I would like to seek your guidance because this is such an important Bill - the Public Audit Bill. However, we only have five or six Members of Parliament present. We are clearly lacking quorum. Could you, please, guide us on the way forward? We need to have more people participating in this debate.

**Hon. Deputy Speaker:** Yes, I can ascertain that there is no quorum. Can we have the Division Bell rung?

*(The Division Bell was rung)*

### ADJOURNMENT

**Hon. Deputy Speaker:** Order, hon. Members. We are unable to raise the requisite numbers. It is understood that some have gone to see the family of our late colleague and therefore, there is no quorum. This House stands adjourned until tomorrow, Thursday, 12<sup>th</sup> February, 2015, at 2.30 p.m.

The House rose at 5.30 p.m.